

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM**

**Complaint no.** 5143 of 2023  
**Date of filing complaint** 16.11.2023  
**Order reserved on** 18.12.2024  
**Date of decision** 19.02.2025

Mr. Kuljit Singh and Mrs. Reeta Singh  
**Both R/o:** VPO Rakkar, Tehsil Dharamshala, District  
Kangra, Himachal Pradesh

**Complainants**

Versus

Vatika Limited  
**Registered office:** Flat no. 621-A, 6<sup>th</sup> Floor, Devika  
Towers, 6, Nehru Place, New Delhi  
**Corporate office:** 7<sup>th</sup> Floor, Vatika Triangle, Mehrauli  
Gurgaon Road, Sushant Lok Phase- I, Gurugram

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Maninder Singh (Advocate)

Complainant

Shri Venket Rao (Advocate)

Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.



**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr.No.	Particulars	Details
1.	Name of the project	"Emilia Floors", Sector- 83E, Vatika India Next, Gurugram- Manesar Urban Complex, Gurugram
2.	Project Area	182 acres
3.	Nature of project	Residential Township
4.	RERA registered/not registered	Registered (for Vatika India Next Phase-II) 36 of 2022 dated 16.05.2022 valid upto 31.03.2029
5.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid upto 31.05.2018
6.	Name of Licensee	M/s Buzz Technologies Pvt. Ltd. & Others.
7.	Allotment Letter	15.11.2010 (page no. 29 of reply)
8.	New Plot no.	Sector-83, Plot no.10, ST.K-15, Level-1 (Page no. 74 of complaint)
	Old Plot no.	1. Plot no. 7, Emilia, GF, ST.83E-2, Sec.83E, VIN, admeasuring 929.02 sq. ft. (Page no. 73 of complaint) 2. HSG-014A-Floor no. 0-Plot No. 7-2nd-St. Sector-83E-Vatika India Next admeasuring 781.25 sq. ft. (Page no. 73 of complaint)
9.	Date of execution of Floor buyer's agreement	30.12.2010 (Page no. 20 of complaint)
10.	Addendum to BBA (Change in unit of complainant)	24.07.2013 (Page no. 73 of complaint)
	Second Addendum to BBA (Change in unit of complainant)	21.09.2017 (Page no. 74 of complaint)
11.	Possession clause	<b>10.1 Schedule for Possession of the said</b>



		<p><b>independent dwelling unit</b></p> <p><i>“That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit <b>within a period of three years from the date of execution of this Agreement unless there shall be delay</b> or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of the said building / said dwelling unit, the Company shall be entitled to reasonable extension of time for completing the same.”</i></p> <p><b>(Emphasis supplied)</b> (BBA at page no. 31 of complaint)</p>
12.	Due date of possession	30.12.2013 (Calculated to be 3 years from the date of execution of builder buyer agreement i.e. 30.12.2010)
13.	Basic Sale Price	Rs. 23,53,007/- (BBA at page no. 23 of complaint) <b>Or</b> Rs.28,71,635.82/- (Account statement dated 19.04.2018 at page 64 of complaint)
14.	Total sale consideration	Rs.32,43,635.82/- (Account statement dated 19.04.2018 at page 64 of complaint)
15.	Total amount paid by the complainant	Rs.13,61,257/- (Rs.7,19,294/- paid by complainant + Rs.6,41,963/- bank disbursement) (Account statement provided by respondent at page 49 of reply)
16.	Tri-partite agreement	31.07.2018 (Page 5 of additional submissions filed)



		by complainant on 14.08.2024)
17.	Demand Letters	21.05.2018- Rs.6,41,963.15/- 06.02.2019- Rs.6,28,951.87/- 02.11.2020-Rs.11,17,341.06/- (page no. 43, 45, 46 of reply respectively)
18.	Pre-termination letter	09.07.2021 (page no. 47 of reply)
19.	Cancellation of unit	04.08.2021 (Amount to be retained by the respondent- Rs.7,65,017/- on account of 20% earnest money, GST, brokerage, interest, VAT, etc.) (page no. 48 and 49 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- a) That the respondent assured the complainants that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would hand over the plot soon. Relying upon those assurances and believing them to be true, the complainants booked a residential plot bearing no. 0029/Ground Floor/Emilia Floors having a super area of 940 sq. ft at 2<sup>nd</sup> Street, Sector-83E, Vatika India Next, Gurugram for basic sale price of Rs. 28,71,635.82/-. Accordingly, the complainants paid an amount of ₹2,35,300/- to the respondent vide cheque bearing no. on 09.10.2009 as booking amount.
- b) That the respondent assured the complainant that it would execute the builder buyer agreement at the earliest and maximum within one week. However, the respondent did not fulfil its promise and has not executed the agreement as agreed by it. The complainants requested the respondent to allot the promised plot and to execute the required agreement for the same, however, the respondent kept delaying and executed the builder buyer agreement on 30.12.2010 after causing a delay of one year.
- c) That thereafter, the respondent started raising the demand of instalments from the complainants, which was duly paid by the complainants as per



agreed timelines. The complainants took a loan from LIC Housing Finance Private Limited to pay the demands raised by the respondent and fulfilled all the demands on time. The complainants as on date has paid ₹7,19,294/- from their account and Rs.6,41,963/- by way of bank loan, total amounting to Rs.13,61,257/- towards the sale consideration of the plot.

- d) That thereafter, the respondent begins raising demand in lieu of the construction of the said plot. However, after a certain time, the respondent turned silent upon the status of the project and did not raise any further demands with respect to the unit for which the complainants also visited multiple times at the office of the respondent to inquire about the status of his unit but the respondent did not provide any satisfactory reply and kept delaying the construction of the project under variety of pretexts and assured the complainants that they shall intimate them as to when the construction work shall recommence.
- e) That on 24.07.2013, the respondent changed the unit of the complainants to Plot No. 7 at Ground Floor Emilia, Street 83-E, Vatika India Next, Gurugram upon the pretext that there has been some issue with respect to the land of the earlier unit. Later, the respondent again changed the unit of the complainants without their consent from the aforesaid unit to Plot No. 10, ST.K-15, Level 1, Vatika India Next, Sector-83, Gurugram again upon the same grounds. However, the complainants yet accepted all the manipulations of the respondent with respect to their unit only under the hope that they shall get their residential unit soon and accordingly an addendum was executed between the parties on 21.07.2017.
- f) That thereafter in April 2018, the respondent raised another demand which was duly paid to the respondent by the financier of the complainants. However yet again, the respondent turned silent and did not provide any response to the complainants for two years with respect to the



development of the project and deliberately ignored all the enquires raised by the complainants.

- g) That thereafter in the year 2020, the complainants could not keep up with the status of the project due to Covid 19 Pandemic and commencement of a nationwide lockdown and meanwhile, the respondent deliberately did not provide for any status update with respect of the construction of the said plot.
- h) That upon receiving no communication from the respondent, the complainants yet again attempted to inquire for the status of development with respect to his unit and was shocked to find out from the manager of the respondent that unit has been terminated on account of non-payment of dues raised by the respondent in September 2020. However, the complainants did not receive any demand issued by the respondent in this regard.
- i) That in accordance with clause 10.1 of the builder buyer agreement dated 30.12.2010 executed between the parties, the respondent was obligated to provide for the possession within 3 years from the date of the execution of the agreement which comes out to be 30.12.2013. However as on today, it has been almost 10 years, but the respondent has not completed the construction of the said project till date and the complainants have not been provided with the possession of the said unit despite all promises done and representation made by the respondent.
- j) That the cause of action accrued in favor of the complainants and against the respondent on 09.10.2009 when the complainants had booked the said plot, and it further arose when respondent failed /neglected to deliver the said plot. The cause of action is continuing and is still subsisting on a day-to-day basis as the respondent has cancelled the allotment despite making all the payments within the stipulated deadlines.



**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):

I. Direct the respondent to pay interest at applicable rates on account of delay in offering possession on Rs.13,61,257/- towards the sale consideration paid by the complainants from the date of payment till the date of delivery of possession.

II. Direct the respondent to handover the possession to the complainants.

III. Direct the respondent to withdraw the unreasonable termination of the unit.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following on the following grounds vide its reply dated 14.03.2024:

a) That after having keen interest in the project constructed by the respondent the complainants, decided to book the independent floor titled as 'Emilia Floors', vide application form dated 09.10.2009, upon his own judgement and investigation. The complainants were aware of terms and conditions of the application form and had agreed to sign without any protest and demur.

b) That on 31.10.2009, the respondent vide welcome letter intimated the complainants that the project is launched and acknowledged the receipt of Rs.2,35,300/- paid by the complainants as a booking amount. Further, the respondent vide letter dated 28.05.2010, intimated the complainants that the designing of master layout plans for floors shall commence now as from past months it was held up due to some government process of earmarking the main roads and sector roads and informed that the allotment process will commence soon.

c) Thereafter, the respondent vide allotment letter dated 15.11.2010, allotted a Plot no. 7, GF, 2<sup>nd</sup> Street Sec-83E, VIN admeasuring 781.25 sq. ft., in the abovementioned project being developed by the respondent.



- d) That on 30.12.2010, a builder buyer agreement was executed between the parties at a basic sale consideration of Rs.23,53,000/-.
- e) That as per clause 8 of the agreement, time was the essence of the agreement with respect to allottee's obligations to pay the price of the said plot in accordance with the agreed payment schedule. The complainants defaulted in making payments from the initial stages of booking.
- f) That on 15.02.2011, the respondent sent a payment of instalment due letter stating that as per the agreed payment schedule, the complainants are due to pay Rs.3,52,951/- by 31.01.2011 but the complainants failed to do so. The respondent again raised Instalment Reminder notice dated 08.03.2011, wherein the respondent intimated the complainants that Rs.3,52,951/- is still due and requested the complainants to pay the same by 15.03.2011. Despite such reminders, the complainants failed to pay the due amount.
- g) That the respondent was constrained to issue a notice of penal interest dated 25.04.2011, wherein the respondent intimated the complainants that due to default of non-payment, the respondent shall be imposing a penal interest on delayed amount and further gave 7 days extension to complainants to deposit the amount as per the agreed payment schedule, but the complainants again failed to do so. Thus, the respondent was constrained to issue a notice of termination dated 15.06.2011 for non-payment of Rs.1,19,405/- against the instalment and further intimated the complainants that the agreement shall be cancelled if the payment is not made by 22.06.2011. The complainants failed to pay the defaulted amount and same can be verified from the statement of accounts.
- h) That the respondent vide letter dated 10.07.2013, informed the complainant that the area of the allotted unit has been revised to 929.09 sq. ft. and as per the terms and conditions of the agreement, the complainants had to remit an amount of Rs.4,45,060.84/- for the revised area. The





complainants accepted the revised area of the floor with increased charges without any protest or demur.

- i) That on 24.07.2013, an addendum was executed between the parties, wherein the unit number of the allotted unit was changed to Plot no. 7, GF, Emilia, ST, 83E-2, Sec 83E, VIN admeasuring 929.02 sq. ft. in lieu of old plot no. HSG-014A-Floor No.0-Plot no. 7-2<sup>nd</sup> St.-Sector- 83E- Vatika India Next. The complainants were explained the reasons for change in numbering which was duly accepted by the complainants, without any protest or demur.
- j) That the respondent vide addendum dated 21.09.2017, re-allotted raw plot bearing no. 10, Sector-83, ST.K-15, Level 1 admeasuring 940 sq. ft. in lieu of old plot no. 7, GF, Emilia, ST, 83E-2, Sec 83E, VIN. Due to change in area, the basic sale consideration was revised to Rs.31,71,636.06/- which was understood and agreed buy the complainants without any protest or demur. The complainants have only paid an amount of Rs.13,61,257/- till date.
- k) That as per clause 11.1 of the agreement, the complainants acknowledged and agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to any act or notice or notification issued by the Government or Public or Competent Authority. The complainants were aware that the respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under the category of force majeure.
- l) Subsequent to the booking and the signing of the agreement, the respondent was facing umpteen roadblocks in construction and development works in projects in its licensed land comprised of the township owing to the initiation of the GAIL Corridor which passes through the same. The concomitant cascading effects of such a colossal change

necessitated realignment of the entire layout of the plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.

- m) That based on our representation, a letter no (GAIL/ND/Projects/CJPL) dated 29.05.2009 written by GAIL (India) Ltd to the Director Town & Country Planning, Haryana under which a request for issuance of NOC for re-routing of Chalnsa-Gurugram-Jhajjar-Hissar natural Gas pipeline of GAIL in sector 77, 78, 82, 82A, 86, 90, 93 & 95 in Gurugram. A meeting was held between Gail and the administrator Huda on 07.07.2009 to discuss feasibility which was approved. GAIL requested the Administrator, Huda, Gurugram to submit the feasibility to DTCP, Haryana.
- n) That on 05.08.2009, by District Town Planner to Gail India, proposed re-routing of gas pipeline should be through green belt/corridor proposed master plan. Further a Civil Writ Petition No 16532 of 2009 (O&M) date of decision 21.12.2009 - petitioner Shivam Infratech Pvt. Ltd Versus Union of India & Ors., was also filed by respondent. GAIL has denied for the re-routing alterative proposal. Due to non-issuance of consent by state of Haryana, Gail without waiting further has executed & completed gas pipeline work as per original schedule, thus approximately 90-100 plots and villas effect due to this layout of GAIL Pipeline.
- o) Further, considering the positive approach of HUDA authorities as they were seeking re-routing permission from GAIL, respondent applied for license pertaining to the said project. Meanwhile, during the pendency of granting of project license, GAIL had granted permission for reducing ROU from 30 mtrs to 20 mtrs., vide its letter dated 04.03.2011 that passes through the Project Land. Although GAIL had reduced the ROW by 10 mtrs,



but since they had denied the re-routing of the GAIL corridor, respondent not only lost number of plots but had to re-design the project land that consumed money and time and hence the project got delayed.

p) That the government of Haryana had notified Gurgaon Manesar Urban Complex 2021, vide their notification dated 05.02.2007 and the licenses for development of real estate projects in Gurgaon and other areas of Haryana were granted by the Govt. of Haryana accordingly. The acquisition process of sector roads was initiated by the Govt. of Haryana in the year 2010.

- Sector dividing road 81/82, 82A/82, 82/83, 83/84, 84/85
- Section 4 of Land Acquisition Act - 11-02-2010
- Section 6 of Land Acquisition Act - 19-02-2010
- Award/Compensation - 14-06-2010

q) However, the acquisition of sector dividing road 84/85 was de-notified by the government in year 2011 and a fresh section 4 and 6 was notified on 20-03-2013 and 03-12-2013 respectively. Thereafter the final award was announced on 02-12-2015. Delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy on acquisition of 24 mtr roads has resulted in massive delay in laying of services, thus impacting development.

r) That after de-notification of Sector Road as mentioned in sub para (a) of (iii) above, the government had introduced the land acquisition by way of policies such as TDR (Transfer of Development Rights). The department has issued draft notification for construction and provision of services (TDR Policy) on 03.06.2014 to ensure "Integrated Infrastructure Development, Including Roads, Water Supply, Drainage, Electricity, Telecom etc. By virtue of said policy, the farmers must surrender their land (falling under acquisition) to the Govt. and have to obtain TDR certificate there from in lieu of his/her land. Thereafter, the Farmers have to sale the TDR certificate to the developers.



- s) That DTCP, Haryana, in a joint meeting held at Gurugram, had directed to developers to purchase the land from farmers, which is part of 24 mtr circulation road. On the request of DGTCP Haryana, we have initiated process to buy the land parcel from the farmers, Munadi and public notice were published in leading newspapers on 29.11.2013 but it was very difficult to buy the land falling exactly within the proposed road section. Respondent had faced issues in purchasing land under TDR policy due to the reasons such as; (i) Farmers, whosoever is interested in selling his land would like to sell his/her entire land/ownership irrespective of the thing that developer want the entire land parcel or a piece of the same, (ii) There is no recourse or timeline for farmers who do not agree to sell their lands falling within roads result delay in acquisition by developer, (iii) Farmers do not wish to follow the lengthy acquisition process as same involves surrender of land to govt., obtaining of TDR certificate, negotiation with developers, Selling of land in full or part to developers etc, and (iv) Farmer is not satisfied with the amount of sale consideration offered by the developers and demanding huge amount which is much higher than the market rate. Since the 24m road/sectoral plan roads function as sub-arterial roads of the development and serve as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, Sewerage, Drainage, Electricity, Telecom etc., it is important for us to have the same in our township/project land. Two sector roads (24 mtr) are falling in the Project land and due to non-acquisition of the same, we have totally lost the road connectivity and supply of construction materials etc to the project land has become big challenge for us.
- t) That some of the local landowners including a collaborator such as Janakraj, Dhani Mamchand etc. had entered into litigation in respect of their



respective land parcel against respondent/Govt. and obtained stay orders. The said litigations have resulted in delay in construction of sector road and further delay in the construction activity in the project. The inability of HSVP to resolve this issue of 100 square yards is affecting the entire development of the 84 mtr. sector road which is the main access point into this GH society. Please mark the access on a mark along with photos of the current status of the road.

- u) That the respondent issued invoice dated 29.03.2018 in favour of the complainants for payment of Rs.3,52,900.40/- which was due to be paid on 19.04.2018, but the complainants failed to do so. Thereafter, reminder letter dated 21.05.2018 was issued to the complainants for payment of amount of Rs.6,41,963.15/- within 7 days of receipt of this letter which the complainants failed to do. An invoice dated 08.08.2018 was also issued in favour of the complainants for payment of instalment of Rs.5,29,350.60/- which was due to be paid on 21.08.2018. Another reminder letter dated 06.02.2019 for payment of amount of Rs.6,28,951.87/- within 7 days of receipt of this letter was issued which the complainants again failed to do.
- v) That on 02.11.2020, a reminder letter was sent by the respondent to complainants for payment of Rs.11,17,341/- and 7 days were given to the complainants to clear the outstanding dues. Finally, a notice of termination dated 09.07.2021 was issued to the complainants to pay the outstanding dues amounting to Rs.14,12,466.36/-. After not receiving the due amount for 3 years, the respondent was constrained to send a letter of cancellation cum recovery notice to the complainants. Further, the respondent is entitled to recover an amount of Rs.7,65,017.03/- from the complainants on account of the said cancellation/termination.
- w) That as per clause 12 of the agreement, it had been agreed between the parties that in case the complainants defaulted in making the payments as



per the agreed payment schedule, then the respondent shall on its own discretion cancel the agreement and the complainants shall have 30 days to rectify the said default and if not rectified, the agreement shall stand cancelled. Thus, the cancellation of the agreement is legal and valid.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

**E. Written Arguments on behalf of the complainants:**

9. The complainants are making following additional submissions by way of written arguments dated 03.01.2025:
  - a) That the respondent cannot cancel the allotment of the allottee without possessing a sufficient cause for the same as the complainants performed its part of the obligation under the buyer's agreement dated 30.12.2010 wherein they paid a sum of Rs.13,61,257/- against the purchase of the subject unit within stipulated timelines.
  - b) That when the complainants under pursuance of its work obligation were constrained to shift over to a new address, the complainants duly informed the said change to the respondent time and again vide its e-mails complying to its own responsibility agreed within clause 43 of the buyer's agreement dated 30.12.2010. However, despite the complainant's requests of changing the communication address within the records of the respondent, the respondent deliberately kept on sending the demand letters over the previous address of the complainants due to which the complainants had no clue as to issuance of demand letters which ultimately became the reason for non-fulfilment of demand letters issued by the respondent.
  - c) That the respondent breached the terms and conditions of the buyer's agreement dated 30.12.2010 executed among the parties, contravening the



provisions of the Act and present cancellation of unit is nothing but an afterthought by the respondent with sole intent of hiding its own shortcomings before the Authority and thus, cancellation letter is liable to be set aside.

**F. Jurisdiction of the authority**

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for reasons given below.

**F.I Territorial jurisdiction**

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F.II Subject matter jurisdiction**

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**"Section 11.**

\*\*\*\*

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of



obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the objections raised by the respondent.**

**G.I Objection regarding delay on account of GAIL Pipeline.**

14. The respondent has raised a contention that the completion of project was hindered due to passing of GAIL Pipeline through the project. However, the plea advanced in this regard is devoid of merits. Firstly, the unit was allotted to the complainant-allottees on 15.11.2010 and the GAIL notification regarding lying of pipeline came out in the year 2009, which is prior to the allotment, and subsequently the allotted unit was cancelled due to non-availability of unit on account of passing of GAIL pipeline through the township in the year of 2018, which is after 7 years (approximately) of notification and thereafter permission for reducing ROU from 30 mtrs. to 20 mtrs. in the year 2011. However, there is no justification for the wait for such long period as it is well settled principle of law that a person cannot take benefit of his own wrong.

**G.II Objections regarding force majeure.**

15. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as acquisition of sector road land parcels in the township as well as acquisition of sector roads by government notification and orders. There may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons as it is well settled principle that a person cannot take benefit of his own wrong and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.





**H. Findings on the relief sought by the complainants.**

- H.I Direct the respondent to pay interest at applicable rates on account of delay in offering possession on Rs.13,61,257/- towards the sale consideration paid by the complainants from the date of payment till the date of delivery of possession.**
- H.II Direct the respondent to handover possession to the complainants.**
- H.III Direct the respondent to withdraw the unreasonable termination of the unit.**

16. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the present case, the complainants booked a unit in the project of the respondent namely "Emilia Floors" by Vatika India Next, Gurugram. They were allotted plot no. 7, Emilia, GF, ST.83E-2, Sec.83E, VIN, admeasuring 929.02 sq. ft. vide allotment letter dated 15.11.2010. Thereafter, a builder buyer agreement was executed between the complainant-allottees and the respondent-promoter on 30.12.2010. Further, on 24.07.2013 an addendum to the buyer's agreement was executed between both the parties, in which the unit was reallocated from plot no. 7, Emilia, GF, ST.83E-2, Sec.83E, VIN., to HSG-014A-Floor no. 0-Plot No. 7-2nd- St. Sector-83E-Vatika India Next and total admeasuring area was decreased from 929.02 sq. ft. to 781.25 sq. ft.. Thereafter, another addendum to the buyer's agreement dated 21.09.2017 was executed between both the parties, in which the unit was reallocated from HSG-014A-Floor no. 0-Plot No. 7-2nd- St. Sector-83E-Vatika India Next, to Sector-83, Plot no.10, ST.K-15, Level-1 admeasuring 940 sq. ft., wherein it was further stated that "All other terms and conditions of the executed floor buyer's agreement shall remain same & binding on the parties."
18. Further, perusal of case file reveals that the possession of the unit was to be offered within a period of 3 years from the date of execution of the agreement. Therefore, the due date of handing over possession comes out to



be 30.12.2013. The complainants have paid an amount of Rs.13,61,257/- against the total sale consideration of Rs.32,43,635.82/- and are ready and willing to retain the allotted unit in question. However, the unit allotted to the complainants was cancelled on account on 04.08.2021 on account of failure to pay the outstanding dues despite several reminders and demand notices. Now, the question before the authority is whether the cancellation is valid or not, in the eyes of law?

19. The complainants through the instant complaint submitted that they have not received any demands or reminder letters from the respondent for payment of outstanding amount due to change of their address from Ajmer to Lucknow. Further, it was only when the complainants enquired about the status of development of the project that they came to know about their allotment being cancelled on account of non-payment of dues raised by the respondent in September 2020.
20. On the other hand, respondent submitted that the complainants have only paid an amount of Rs.13,61,257/- against the total sale consideration of Rs.32,43,635.82/- and several reminder and demand notices were sent by the respondent to the complainants. Subsequently, a final reminder letter dated 09.07.2021 was sent to the complainants giving them the last opportunity to pay the outstanding dues amounting to Rs.14,12,466.36/-, following which a cancellation letter dated 04.08.2021 was sent to the complainants.
21. On consideration of documents available on record and submissions made by both the parties the Authority observes that demand letters dated 21.05.2018, 06.02.2019, 02.11.2020, final reminder letter dated 09.07.2021 and even the cancellation letter dated 04.08.2021 was sent on the old address of the complainants, i.e., House no. 403, Shiva Residency, Haribhau Upadhyaya Nagar, Ajmer, Rajasthan, Pin 305004 instead of their updated

address, i.e., House no. 3/62, Vishwas Khand, Gomti Nagar, Lucknow, Pin 226010. It is pertinent to note that the complainants duly intimated the respondent vide various e-mails dated 16.04.2018, 21.05.2018, 23.06.2022 and 02.08.2022 regarding change of their communication address to House no. 3/62, Vishwas Khand, Gomti Nagar, Lucknow, Pin 226010 (Phone no. 991029730) and same is evident from Annexure C-4 at page no. 75 and 76 of the complaint. In light of these findings, the cancellation of the allotment on 04.08.2021 is deemed invalid and is hereby quashed.

22. In view of the above findings the Authority observes that the respondent has failed to complete the unit in terms of the buyer's agreement dated 30.12.2010 and cancelled the plot on account of its own fault/omission. Thus, the Authority is of the view that the respondent is obligated to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said plot, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. The rationale behind the same is that the allottee purchased the subject plot way back in 2010 and paid the demanded amount in hope to get possession of the allotted unit.
23. Herein, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under: -

**"Section 18: - Return of amount and compensation**

**18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —**  
*in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

24. The interest is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent from the date of possession till offer of possession and the same is balanced vide provision of Section 2(za) of the Act. The complainant cannot be made suffer due to fault of the respondent and to pay for the unit as per today's rate.
25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

26. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

28. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

29. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

30. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 30.12.2013. Occupation certificate has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the

respondent to offer physical possession of the subject plot and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 30.12.2013 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

**I. Directions of the authority**

31. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

I. Cancellation of the plot allotted to the complainants is set aside. The respondent is directed to reinstate the allotment of the complainants. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer agreement between the parties. Further, the possession of the plot shall be handed over to the complainants after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

II. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due



date of possession i.e., 30.12.2013 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the Rules, ibid.

III. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(z) of the Act.

IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

32. Complaint stands disposed of.

33. File be consigned to registry.

**Dated:19.02.2025**

**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram